IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. ARBITRATION APPLICATION NO.11/04

M/s. Vijay Prakash Toshniwal

Versus

National Thermal Power Ltd. & Ors.

DATE OF ORDER :: 16/11/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Dr. P.C. Jain, for applicant

Mr. M.D. Agarwal, for respondents

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Instant application has been filed u/s.11 of Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

Present applicant was awarded work of contract for carpeting of road from railway crossing to Baran Road for NTPC-Anta. There is no dispute that agreement was executed between the parties which contains in arbitration clause as well to resolve the dispute or difference arises out of contract of agreement executed between the parties. Clause 30.0, which is relevant for present purposes, is reproduced as under:

> “Any dispute or difference arising out of this contract shall be settled through the process of arbitration as detailed in the General Conditions of contract for Civil Works [amended upto date]. The provisions of Indian Arbitration and Conciliation Act, 1996 [amended upto date] shall apply. Sole arbitrator shall

be General Manager or Addl. General Manager or Head of Project at the time of arbitration."

Since there is a dispute which arose from the contract agreement entered between the parties, the applicant served a notice through their Advocate for appointment of Arbitrator to resolve the dispute dated 4th July, 2003. It appears that despite notice being served, respondents have failed to make appointment of Arbitrator in terms of Clause 30.0 of the agreement, of which reference has been made supra.

After hearing counsel for parties, this court passed detailed order on 2nd February, 2005 directing the Chairman & Managing Director to appoint Arbitrator in terms of agreement. It has been brought to the notice of this court that in compliance of the order of this court, the respondents appointed Shri A.K. Chawla [Retd. IRAS Officer] General Manager as sole Arbitrator and payment of arbitration fees and cost shall be determined as per NTPC schedule of fee Clause (B). In pursuance of order of his appointment, notices were issued to the parties to submit their claim.

Applicant has no objection with respect to appointment made by respondents vide order dated 22nd February, 2005 in pursuance of order of this court dated 2nd February, 2005, but his only

grievance is that since Arbitrator is stationed at Delhi and the dispute between the parties which is to be resolved is in Rajasthan, it will be difficult for him to meet out the regular expenses. Thus, this Court in exercise of power u/s.11(6) of the Act and taking note of judgment of apex court in **Ace Pipeline Contracts Pvt. Ltd. Vs. Bharat Petroleum Corporation Ltd. [AIR 2007 SC-1764]** appointed him [Shri A.K. Chawla] as Arbitrator. However, the applicant will be at liberty to make a request to the Arbitrator to choose convenient place where arbitral disputes can be arbitrated between the parties.

The applicant may now submit his claim before the Arbitrator and he may proceed further to resolve the dispute in accordance with law.

With the above observations, the application stands disposed of. Both the parties are directed to appear before the Arbitrator on 23rd November, 2007 at 4.30 PM. Copy of this order be sent to the sole Arbitrator for necessary compliance.

[AJAY RASTOGI],J.